

HOUSE BILL No. 2356

By Committee on Judiciary

2-7

AN ACT concerning crime victims compensation; relating to compensation for health care providers and facilities; amending K.S.A. 2000 Supp. 74-7301 and 74-7305 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2000 Supp. 74-7301 is hereby amended to read as follows: 74-7301. As used in this act:

(a) "Allowance expense" means reasonable charges incurred for reasonably needed products, services and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care and for the replacement of items of clothing or bedding which were seized for evidence. Such term includes a total charge not in excess of \$5,000 for expenses in any way related to funeral, cremation or burial; but such term shall not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless other accommodations are medically required.

(b) "Board" means the crime victims compensation board established under K.S.A. 74-7303 and amendments thereto.

(c) "Claimant" means any of the following persons claiming compensation under this act: A victim; a dependent of a deceased victim; a third person other than a collateral source; *a health care provider or facility*; or an authorized person acting on behalf of any of them.

(d) "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under this act which the victim or claimant has received, or which is readily available to the victim or claimant, from:

(1) The offender;

(2) the government of the United States or any agency thereof, a state or any of its political subdivisions or an instrumentality or two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this act;

(3) social security, medicare and medicaid;

(4) state-required temporary nonoccupational disability insurance;

1 (5) workers' compensation;
2 (6) wage continuation programs of any employer;
3 (7) proceeds of a contract of insurance payable to the victim for loss
4 which the victim sustained because of the criminally injurious conduct;
5 or

6 (8) a contract providing prepaid hospital and other health care serv-
7 ices or benefits for disability.

8 (e) "Criminally injurious conduct" means conduct that: (1) (A) Oc-
9 curs or is attempted in this state or occurs to a person whose domicile is
10 in Kansas who is the victim of a violent crime which occurs in another
11 state, possession, or territory of the United States of America may make
12 an application for compensation if:

13 (i) The crimes would be compensable had it occurred in the state of
14 Kansas; and

15 (ii) the places the crimes occurred are states, possessions or territories
16 of the United States of America not having eligible crime victim com-
17 pensation programs;

18 (B) poses a substantial threat or personal injury or death; and

19 (C) either is punishable by fine, imprisonment or death or would be
20 so punishable but for the fact that the person engaging in the conduct
21 lacked capacity to commit the crime under the laws of this state; or

22 (2) is an act of terrorism, as defined in 18 U.S.C. 2331, committed
23 outside of the United States against a person whose domicile is in Kansas.

24 Such term shall not include conduct arising out of the ownership, main-
25 tenance or use of a motor vehicle, except for violations of K.S.A. 8-1567
26 and amendments thereto, or violations of municipal ordinances prohib-
27 iting the acts prohibited by that statute, or violations of K.S.A. 8-1602,
28 21-3404, 21-3405 and 21-3414 and amendments thereto or when such
29 conduct was intended to cause personal injury or death.

30 (f) "Dependent" means a natural person wholly or partially depend-
31 ent upon the victim for care or support, and includes a child of the victim
32 born after the victim's death.

33 (g) "Dependent's economic loss" means loss after decedent's death
34 of contributions of things of economic value to the decedent's depend-
35 ents, not including services they would have received from the decedent
36 if the decedent had not suffered the fatal injury, less expenses of the
37 dependents avoided by reason of decedent's death.

38 (h) "Dependent's replacement services loss" means loss reasonably
39 incurred by dependents after decedent's death in obtaining ordinary and
40 necessary services in lieu of those the decedent would have performed
41 for their benefit if the decedent had not suffered the fatal injury, less
42 expenses of the dependents avoided by reason of decedent's death and
43 not subtracted in calculating dependent's economic loss.

1 (i) "Economic loss" means economic detriment consisting only of al-
2 lowable expense, work loss, replacement services loss and, if injury causes
3 death, dependent's economic loss and dependent's replacement service
4 loss. Noneconomic detriment is not loss, but economic detriment is loss
5 although caused by pain and suffering or physical impairment.

6 (j) "Noneconomic detriment" means pain, suffering, inconvenience,
7 physical impairment and nonpecuniary damage.

8 (k) "Replacement services loss" means expenses reasonably incurred
9 in obtaining ordinary and necessary services in lieu of those the injured
10 person would have performed, not for income, but for the benefit of self
11 or family, if such person had not been injured.

12 (l) "Work loss" means loss of income from work the injured person
13 would have performed if such person had not been injured, and expenses
14 reasonably incurred by such person in obtaining services in lieu of those
15 the person would have performed for income, reduced by any income
16 from substitute work actually performed by such person or by income
17 such person would have earned in available appropriate substitute work
18 that the person was capable of performing but unreasonably failed to
19 undertake.

20 (m) "Victim" means a person who suffers personal injury or death as
21 a result of: (1) Criminally injurious conduct; (2) the good faith effort of
22 any person to prevent criminally injurious conduct; (3) the good faith
23 effort of any person to apprehend a person suspected of engaging in
24 criminally injurious conduct; or (4) an act of terrorism, as defined in 18
25 U.S.C. 2331, committed outside of the United States.

26 Sec. 2. K.S.A. 2000 Supp. 74-7305 is hereby amended to read as
27 follows: 74-7305. (a) An application for compensation shall be made in
28 the manner and form prescribed by the board. *The board shall prescribe*
29 *a form and manner of application for a health care provider or facility.*

30 (b) Compensation may not be awarded unless an application has been
31 filed with the board within two years of the reporting of the incident to
32 law enforcement officials if the victim was less than 16 years of age and
33 the injury or death is the result of any of the following crimes: (1) Indecent
34 liberties with a child as defined in K.S.A. 21-3503 and amendments
35 thereto; (2) aggravated indecent liberties with a child as defined in K.S.A.
36 21-3504 and amendments thereto; (3) aggravated criminal sodomy as de-
37 fined in K.S.A. 21-3506 and amendments thereto; (4) enticement of a
38 child as defined in K.S.A. 21-3509 and amendments thereto; (5) indecent
39 solicitation of a child as defined in K.S.A. 21-3510 and amendments
40 thereto; (6) aggravated indecent solicitation of a child as defined in K.S.A.
41 21-3511 and amendments thereto; (7) sexual exploitation of a child as
42 defined in K.S.A. 21-3516 and amendments thereto; or (8) aggravated
43 incest as defined in K.S.A. 21-3603 and amendments thereto. Compen-

1 sation for mental health counseling may be awarded, if a claim is filed
2 within two years of testimony, to a claimant who is, or will be, required
3 to testify in a sexually violent predator commitment, pursuant to article
4 29a of chapter 59 of the Kansas Statutes Annotated, and amendments
5 thereto, of an offender who victimized the claimant or the victim on
6 whose behalf the claim is made. For all other incidents of criminally
7 injurious conduct, compensation may not be awarded unless the claim
8 has been filed with the board within two years after the injury or death
9 upon which the claim is based. Compensation may not be awarded to a
10 claimant who was the offender or an accomplice of the offender and may
11 not be awarded to another person if the award would unjustly benefit the
12 offender or accomplice.

13 (c) Compensation otherwise payable to a claimant shall be
14 diminished:

15 (1) To the extent, if any, that the economic loss upon which the claim-
16 ant's claim is based is recouped from other persons, including collateral
17 sources; and

18 (2) to the extent, if any, that the board deems reasonable because of
19 the contributory misconduct of the claimant or of a victim through whom
20 the claimant claims.

21 (d) Compensation may be awarded only if the board finds that unless
22 the claimant is awarded compensation the claimant will suffer financial
23 stress as the result of economic loss otherwise reparable. *A health care*
24 *provider or facility shall not be required to show financial stress.* A claim-
25 ant suffers financial stress only if the claimant cannot maintain the claim-
26 ant's customary level of health, safety and education for self and depend-
27 ents without undue financial hardship. In making its determination of
28 financial stress, the board shall consider all relevant factors, including:

29 (1) The number of claimant's dependents;

30 (2) the usual living expenses of the claimant and the claimant's family;

31 (3) the special needs of the claimant and the claimant's dependents;

32 (4) the claimant's income and potential earning capacity; and

33 (5) the claimant's resources.

34 (e) Compensation may not be awarded unless the criminally injurious
35 conduct resulting in injury or death was reported to a law enforcement
36 officer within 72 hours after its occurrence or the board finds there was
37 good cause for the failure to report within that time.

38 (f) The board, upon finding that the claimant or victim has not fully
39 cooperated with appropriate law enforcement agencies, may deny, with-
40 draw or reduce an award of compensation.

41 (g) Except in K.S.A. 21-3602 or 21-3603 or cases of sex offenses es-
42 tablished in article 35 of chapter 21, of the Kansas Statutes Annotated,
43 and amendments thereto, compensation may not be awarded if the eco-

1 nomic loss is less than \$100.

2 (h) Compensation for work loss, replacement services loss, depend-
3 ent's economic loss and dependent's replacement service loss may not
4 exceed \$400 per week or actual loss, whichever is less.

5 (i) Compensation payable to a victim and to all other claimants sus-
6 taining economic loss because of injury to or death of that victim may not
7 exceed \$25,000 in the aggregate.

8 Sec. 3. K.S.A. 2000 Supp. 74-7301 and 74-7305 are hereby repealed.

9 Sec. 4. This act shall take effect and be in force from and after its
10 publication in the statute book.

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